

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Civil Revision Application No.250 of 2024
Civil Revision Application No.251 of 2024

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| Applicants: | Umar son of Soomar, Allahdino alias Porho son of Soomar, Muhammad Uris son of Chhuto and Anwar Shah son of Wali Muhammad Shah through Ms. Shabana Qureshi, advocate. |
| For the Respondent: | Ghulam Sarwar son of Ali Ahmed through Mr. Sagar Ali Sathio, advocate. |
| For the Respondent: | Sadakat Ali son of Khair Muhammad through Mr. Safdar Hussain Laghari, Advocate. |
| For Official Respondents: | Mr. Muhammad Yousuf Rahpoto, A.A.G. |
| Date of hearing: | 28-08-2025 |
| Date of Judgment: | 26-09-2025 |

JUDGMENT

Jan Ali Junejo, J.--- These two Civil Revision Applications, filed under Section 115, Code of Civil Procedure, 1908, call into question separate judgments and decrees of the appellate forum. In Civil Revision Application No. 250 of 2024, the Applicants/Defendants assail the Judgment and Decree dated 27.08.2024 (hereinafter referred to as the "*Impugned Judgment and Decree*") passed by the learned Additional District Judge-I, Tando Muhammad Khan (hereinafter referred to as the "*Appellate Court*"), in Civil Appeal No. 45 of 2024, whereby the appellate court dismissed the appeal and maintained the Trial Court's Judgment and Decree dated 30.04.2024 passed by the learned Senior Civil Judge-II, Tando Muhammad Khan (hereinafter referred to as the "*Trial Court*"), in F.C. Suit No.101 of 2021 (Suit for Declaration, Possession, and Injunction). In Civil Revision Application No. 251 of 2024, the

Petitioners/Plaintiffs impugn the Judgment and Decree dated 27.08.2024 (hereinafter referred to as the "*Impugned Judgment and Decree*") passed by the learned Additional District Judge-I, Tando Muhammad Khan, in Civil Appeal No. 43 of 2024, affirming the Trial Court's Judgment and Decree dated 30.04.2024 in F.C. Suit No. 15 of 2022 (Suit for Specific Performance, Declaration, Cancellation, and Injunction). Thus, C.R.A. No. 250 of 2024 is directed against the appellate Judgment and Decree in Civil Appeal No. 45 of 2024, affirming the Judgment in F.C. Suit No. 101 of 2021, while C.R.A. No. 251 of 2024 is directed against the appellate Judgment and Decree in Civil Appeal No. 43 of 2024, affirming the Judgment in F.C. Suit No. 15 of 2022. Given the common parties, overlapping facts, and identical subject matter, both revisions are being heard and decided together.

2. The dispute revolves around agricultural land bearing Survey No. 115, situated in Deh Qabool Pur, Taluka Bulri Shah Kareem, District Tando Muhammad Khan. The admitted owner of the said land was Respondent Sadakat Ali Solangi. The case of the applicants is that they, along with their family members, have been in occupation of a portion of the suit land for several decades as haris (sharecroppers) under the ownership of Respondent Sadakat Ali, and had also raised katcha houses thereon. They asserted that on 12.06.2021, Respondent Sadakat Ali entered into an oral agreement to sell the entire land to them for a total consideration of Rs.200,000/-, out of which Rs.50,000/- was paid as earnest money in the presence of witnesses, with the balance amount agreed to be paid within three months. According to the applicants, despite this arrangement, Respondent Sadakat Ali fraudulently executed a registered sale deed in favour of Respondent Ghulam Sarwar, on 19.02.2021, and the corresponding mutation was entered in the revenue record on 09.04.2021.

3. On the basis of the registered deed, Respondent Ghulam Sarwar instituted F.C. Suit No.101 of 2021 seeking declaration of ownership, possession, and injunction against the applicants, alleging that they had refused to vacate the land despite repeated demands. The applicants, in turn, filed F.C. Suit No.15 of 2022 against both Respondent Sadakat Ali and Respondent Ghulam Sarwar, seeking specific performance of the alleged oral agreement, cancellation of the registered sale deed, declaration, and injunction. Both parties led evidence in support of their respective claims. The applicants examined themselves and produced two purported eyewitnesses to the alleged oral agreement, while Respondent Ghulam Sarwar relied upon the registered sale deed and mutation entries as conclusive proof of his ownership. Respondent Sadakat Ali categorically denied having ever entered into any oral agreement with the applicants or having received any earnest money from them. The learned Senior Civil Judge-II, Tando Muhammad Khan, through separate judgments dated 30.04.2024, decreed F.C. Suit No.101 of 2021 in favour of Respondent Ghulam Sarwar, declaring him to be the lawful owner of the suit land by virtue of the registered sale deed dated 19.02.2021, and directed delivery of vacant possession of approximately 7/8 ghuntas of land in occupation of the applicants. Simultaneously, the learned Trial Court dismissed F.C. Suit No.15 of 2022 filed by the applicants, holding that they had failed to prove the alleged oral agreement or any right to specific performance. The applicants preferred Civil Appeal Nos.45 and 43 of 2024 before the learned Additional District Judge-I, Tando Muhammad Khan, which were dismissed by a separate judgment dated 27.08.2024, thereby affirming the findings of the Trial Court. Aggrieved by these concurrent judgments and decrees, the applicants have invoked the revisional jurisdiction of this Court through the present Civil Revision Applications. The essential facts, therefore, bring into focus two competing claims: one founded on an alleged oral agreement and the other resting on a registered sale deed.

4. Learned counsel for the Applicants, in support of both the Civil Revision Applications, contended that the judgments and decrees of the courts below are perverse, illegal, and based on misreading and non-reading of the evidence. He argued that the Applicants were long-standing haris on the suit land and had entered into a valid oral sale agreement with Respondent Sadakat Ali, on 12.06.2021, for a total consideration of Rs.200,000/-, out of which Rs.50,000/- was paid as earnest money in the presence of witnesses. He submitted that despite this agreement, Respondent Sadakat Ali fraudulently executed a registered sale deed in favour of Respondent Ghulam Sarwar, on 19.02.2021, thereby depriving the Applicants of their lawful rights. He emphasized that the courts below failed to appreciate the contradictions in the Respondents' version, ignored material evidence produced by the Applicants, and overlooked their continuous possession over the land. It was thus prayed that the impugned separate judgment dated 27.08.2024 and the judgment dated 30.04.2024 be set aside, the Applicants' suit for specific performance be decreed, and the Respondent's suit for declaration and possession be dismissed, by allowing both the Civil Revision Applications. The learned counsel has relied upon the case law reported in 2019 SCMR 524.

5. Conversely, learned counsel for Respondent (Sadakat Ali) in Civil Revision Application No. 251 of 2024 submitted that no oral agreement of sale ever took place with the Applicants and no amount was ever received by him as earnest money. He maintained that the plea of an oral agreement was a concoction, introduced only as a counter-blast after the execution of the registered sale deed in favour of Respondent Ghulam Sarwar. He emphasized that the Applicants had failed to discharge their heavy burden of proving the alleged oral agreement through cogent and consistent evidence, and their contradictory statements regarding the dates of agreement fatally undermined their case. He therefore argued that both the courts below rightly dismissed the

Applicants' suit for specific performance and the findings call for no interference. Lastly, the learned counsel prayed for dismissal of the Civil Revision Application.

6. In Civil Revision Application No. 250 of 2024, learned counsel for Respondent (Plaintiff Ghulam Sarwar in Suit No. 101 of 2021) submitted that he had lawfully purchased the suit land from Sadakat Ali through a registered sale deed dated 19.02.2021, which was duly entered and mutated in the revenue record. He argued that a registered document carries a presumption of truth and validity, and the Applicants utterly failed to produce any reliable evidence to dislodge this presumption. He further submitted that the plea of an oral agreement, being inconsistent and unsubstantiated, was rightly discarded by the courts below, while the relief of declaration and possession was lawfully granted to him on the basis of title. He prayed for dismissal of the revisions with costs.

7. Learned Assistant Advocate General, appearing for the official Respondents, supported the impugned judgments, contending that the courts below had meticulously examined the evidence and correctly applied the law. He submitted that the findings of fact recorded concurrently by both the courts are well-reasoned, free from illegality or jurisdictional error, and therefore do not warrant interference in revisional jurisdiction.

8. I have heard the learned counsel for the parties at length and, with their able assistance, carefully examined the evidence and material available on record as well as the reasoning contained in the impugned judgments. Perusal of evidence shows that the dispute concerns agricultural land bearing Survey No. 115, Deh Qabool Pur, Taluka Bulri Shah Kareem. Two suits were instituted in respect of the same property: (i) F.C. Suit No. 101 of 2021 by Mr. Ghulam Sarwar for declaration of title, recovery of possession and injunction;

and (ii) F.C. Suit No. 15 of 2022 by the present applicants for specific performance of an alleged oral agreement, cancellation of the registered sale deed and related reliefs. The present Revisions arise out of the consolidated appellate dismissal dated 27.08.2024 which affirmed the trial judgments dated 30.04.2024. The primary factual contest is whether a valid oral agreement for sale was concluded in favour of the applicants and whether the registered sale deed dated 19.02.2021 in favour of respondent Mr. Ghulam Sarwar (Exh-49) and the subsequent mutation (Entry No. 346 dated 09.04.2021) can be set aside or displaced by oral proof. The applicants consistently asserted long-standing occupation as haris and pleaded an oral sale agreement for the whole suit land at a consideration of Rs. 200,000/-, with an earnest payment of Rs. 50,000/-. However, the precise date and circumstances of this alleged agreement are pleaded and proved inconsistently across pleadings and testimony — a point central to the trial and appellate analysis. Respondent Mr. Ghulam Sarwar produced a registered Sale Deed No. 469 dated 19.02.2021 (Exh-49/Mark-95/D) and proved the corresponding revenue mutation entry dated 09.04.2021 (Mark-94/C). These documents were admitted into evidence and formed the backbone of his title case. The record contains testimony from the applicants' principal witnesses depending on the suit) and lay evidence from respondent witnesses including Sadaqat Ali (the alleged vendor) and the vendee (Ghulam Sarwar). The trial court observed the demeanour and consistency of witnesses and recorded its credibility findings which were re-assessed by the Appellate Court.

9. In the specific performance suit, the plaint categorically pleaded the date of the alleged agreement as 12.06.2021. However, the applicants' witnesses in their depositions repeatedly referred to January 2021 (10.01.2021), while some even asserted an earlier meeting on 01.01.2021 and an attempt to tender the balance payment on 01.04.2021. The written

statement in the connected proceedings introduced yet another date (10.01.2021). This multiplicity of inconsistent dates is not a minor discrepancy; rather, it strikes at the very root of the alleged contract and the sequence of events relied upon to impeach the registered sale deed. The learned Trial Court found this variance to be fatal, and the learned Appellate Court independently concurred. Furthermore, the depositions of the applicants' own witnesses were riddled with contradictions. One of the key witnesses, Arshad, claimed that the meeting occurred at his Otaq and admitted that he left midway without witnessing the alleged payment of earnest money. Another principal witness, Jan Muhammad, in his examination-in-chief, made no mention of Arshad's presence at the meeting. Even the applicants themselves, including Umer, introduced shifting narratives on material particulars that were never pleaded. These contradictions, improvements, and inconsistencies were rightly treated by both courts below as destructive of the applicants' credibility and fatal to their claim.

10. The applicants introduced new factual scaffolding at the trial stage (new dates, different sequences for payment and tender of balance) which were absent from their pleadings. Such afterthoughts amount to improvements that deprive the evidence of reliability; the courts below applied the elementary rule of *secundum allegata et probata* and rightly concluded that the applicants attempted to prove a case materially different from that pleaded. This was a legitimate ground for rejecting their proof. Where oral agreements are alleged in the face of a subsequent registered instrument, the law requires clear, consistent and convincing evidence. The applicants' oral proof contained no dependable contemporaneous documentary corroboration (receipts, entries, any contemporaneous memorandum) and its witness evidence was fraught with material contradictions. The trial court thus declined to displace the

registered instrument on the basis of the applicants' evidence; the appellate court upheld that conclusion.

11. The respondent produced the registered Sale Deed dated 19.02.2021 and the mutation in revenue records dated 09.04.2021. A registered sale deed is a solemn document; it carries a presumption of regularity and truth which can only be displaced by cogent proof demonstrating fraud, forgery or malafide collusion. The applicants failed to discharge this heavy onus. To impeach the registered deed, the applicants needed to prove by clear and convincing evidence that either (a) the deed was procured by fraud or without the vendor's authority; or (b) a prior binding contract in their favour existed and was proved strictly as pleaded. The inconsistent oral testimony and lack of corroboration were inadequate to rebut the sanctity of the registered instrument. Both courts below applied this standard and correctly refused to set aside the deed.

12. The applicants argued that long possession and status as haris, coupled with an oral agreement, vested rights enforceable against the registered vendee. The Appellate Court correctly observed that Section 54 of the Transfer of Property Act requires registration for the transfer of immovable property and that title passes on registration. Possession is consequential to title; physical occupation alone does not override a registered instrument establishing title. The previous I.D. complaint/order, which recorded physical possession, did not confer or determine title adverse to the registered owner. In this respect the courts below applied correct legal propositions and reached conclusions open on the evidence.

13. The learned Appellate Court, while hearing the appeals, undertook a complete and independent re-appraisal of the oral as well as documentary evidence and examined the reasoning of the learned Trial Court. It observed

that the applicants' case rested solely on an alleged oral agreement, which was neither pleaded with specificity nor proved through consistent and cogent evidence. The multiplicity of dates mentioned by the applicants themselves, coupled with contradictions in the testimony of their witnesses, fatally undermined the reliability of their version. The Appellate Court held that where the case is founded upon an oral agreement of sale, the law requires strict proof, and in the absence of clear and trustworthy evidence, such a claim cannot prevail over a registered document. The learned Appellate Court further emphasized the sanctity of the registered sale deed dated 19.02.2021 executed in favour of Respondent Ghulam Sarwar, which carried with it a presumption of validity under the law. It noted that the applicants had failed to adduce any convincing evidence to dislodge this presumption or to show that the deed was procured through fraud, misrepresentation, or collusion. On the contrary, the documentary evidence placed by Respondent Ghulam Sarwar, including the sale deed and the subsequent mutation entry, was found to be conclusive proof of his ownership rights. The Appellate Court also highlighted that the relief of specific performance is not granted as of right but is an equitable and discretionary remedy. Even assuming, *arguendo*, that some form of oral arrangement had been discussed, the inconsistent stance of the applicants, their failure to prove readiness and willingness, and the existence of a valid registered conveyance in favour of a bona fide purchaser rendered it inequitable to decree specific performance in their favour. Accordingly, the Appellate Court concluded that no lawful or equitable ground existed to cancel the registered deed or to displace the title lawfully vested in Respondent Ghulam Sarwar. Its reasoning thus squarely addressed and repelled the core contentions urged by the applicants in appeal, and independently affirmed the well-reasoned findings of the Trial Court.

14. Under Section 115 CPC the revisional jurisdiction of this Court is narrow: interference is permissible only where the subordinate court exercised jurisdiction not vested in it, failed to exercise jurisdiction vested in it, or acted with material illegality or irregularity. The present record reveals no such jurisdictional infirmity. Rather, both courts below reached concurrent findings on credibility and documentary weight which are supported by the record and therefore not amenable to interference in revision. There is a material and irreconcilable variance between what was pleaded and what was proved by the applicants, the multiple dates and divergent versions are fatal to the applicants' claim of a prior enforceable oral agreement. The courts below correctly applied the rule of proof *secundum allegata et probata*. The applicants' principal witnesses gave self-contradictory testimony on core facts (venue of meeting, presence of witnesses, payment particulars and dates). One key witness admitted he did not witness payment. These inconsistencies rendered the applicants' oral case inherently improbable and unworthy of credit. The trial court's credibility findings were open on the evidence and the Appellate Court's independent affirmation does not disclose perversity. The registered sale deed (Exh-49) and mutation were cogently proved. The applicants failed to produce any contemporaneous corroborative document or consistent evidence sufficient to rebut the presumption of regularity of the registered deed. The conclusions of the courts below in this regard are legally and factually sound.

15. The record reflects that the applicants were in mere physical occupation of a portion of the suit land, ostensibly as haris with katcha structures, but such possession did not confer upon them any lawful title as against the registered vendee. Both courts below rightly rejected the contention that Section 54 of the Transfer of Property Act, 1882, or a prior I.D. order, could be construed as substituting or conferring title in favour of the applicants.

Moreover, even if the existence of a pre-existing oral contract had been established, which it was not, the remedy of specific performance is equitable and discretionary in nature. In the face of the applicants' inconsistent and unreliable case, coupled with the lawful purchase of the land by the respondent through a registered sale deed, no equitable grounds existed to grant such relief. The learned Appellate Court, therefore, correctly applied the settled principles of law in declining the relief of specific performance and upholding the sanctity of the registered conveyance. In the case of ***Saddaruddin (deceased) through LRs v. Sultan Khan (deceased) through LRs and others (2021 SCMR 642)***, the Hon'ble Supreme Court has categorically held that: *"However, we have found that the appellant has neither detailed the material contents of the sale agreement in the plaint nor the fact that the said oral agreement was witnessed by any one or the witnesses of the oral sale had died. Even the plaint does not describe the event of jirga which the plaintiff has disclosed in his evidence"*. Applying this principle, both the courts below concluded that the applicants' contradictory versions regarding dates, place of alleged agreement, and presence of witnesses rendered their claim inherently unreliable.

16. The courts below evaluated the evidence, appraised witness credibility and weighed the documentary record. Their reasoning is cogent, addresses the core disputes and applies settled legal standards (including the heavy onus on a party seeking to displace a registered instrument, and the need for strict proof of oral agreements). The concurrent findings of fact recorded by the courts below do not suffer from any perversity, misdirection of law, or jurisdictional defect. This Court, therefore, finds no occasion to exercise its revisional jurisdiction under Section 115, C.P.C. It is a well-settled principle that concurrent findings of fact are not to be disturbed except where there is gross misreading or non-reading of material evidence, or a patent illegality in the exercise of jurisdiction. The Honourable Supreme Court of Pakistan, in the

case of *Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)*, has reaffirmed this settled position of law. As no such exceptional circumstance, illegality, or jurisdictional error has been demonstrated by the applicants, no ground for interference within the narrow revisional scope of this Court is made out.

17. For the reasons recorded hereinabove, this Court finds that the judgments of the learned Trial Court dated 30.04.2024 and the learned Appellate Court dated 27.08.2024 are based on a proper appreciation of evidence and a correct application of law. The applicants have failed to discharge the heavy burden of dislodging the registered sale deed or establishing a binding prior oral contract as pleaded. No jurisdictional error, illegality, or material irregularity has been pointed out. The concurrent findings of fact recorded by the courts below are well-reasoned and borne out from the record. Consequently, both these Civil Revision Applications, being devoid of merit, are hereby dismissed, with the parties left to bear their own costs.

JUDGE

Ahmed/Pa,